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July 19, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY COURIER

Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

Re: CC Docket No. 98-141

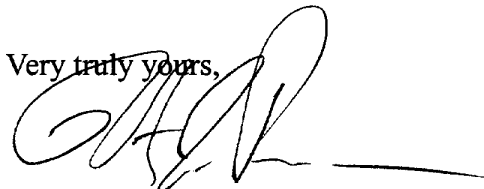
Dear Ms. Salas:

On behalf of CTC Communications Corp., enclosed for filing is an original and eight copies of its Comments in the above-referenced docket.

Also enclosed is an extra copy of these Comments. Please date stamp the copy and return it via my courier.

If you have any questions, please contact me.

Very truly yours,



Morton J. Posner

Counsel for CTC Communications Corp.

cc(w/encl.): Janice Myles
ITS
Jordan Michael, Esq.
cc(w/o encl.): Eric J. Branfman, Esq.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

RECEIVED
JUL 19 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Applications for Consent to the Transfer)	
of Control of Licenses and Section 214)	
Authorizations from)	CC Docket No. 98-141
)	
Ameritech Corporation, Transferor, to)	
)	
SBC Communications, Inc., Transferee)	

COMMENTS OF CTC COMMUNICATIONS CORP.

CTC Communications Corp. ("CTC"), by counsel, pursuant to the Commission's July 1, 1999 Public Notice in this docket, hereby files its Comments on the conditions proposed by SBC Communications, Inc. and Ameritech Corporation for their pending application to transfer control ("merger conditions"). CTC, a publicly held Massachusetts corporation, is a competitive local exchange carrier ("CLEC") that resells the local exchange and intrastate telecommunications services of Southern New England Telephone ("SNET") in Connecticut.^{1/} Although the merger conditions serve the laudable goal of opening markets to local exchange competition, much as is the intent of Section 271, the merger conditions as drafted fail to open local markets to competition for resellers such as CTC. Further, by their own terms, some merger conditions would not apply to SNET in Connecticut on the same implementation schedule as SBC would be required to implement in other states jeopardizing "parity" of service standards, further delaying local exchange competition in Connecticut. CTC recommends that

^{1/}SNET is an affiliate of SBC, although it has not been subject to the market opening requirements of Section 271 of the Telecommunications Act of 1996 (the "Act").

the merger conditions be strengthened by: (1) SBC abiding by final administrative decisions based on the Act throughout its region including Connecticut; and (2) SBC implementing the merger conditions in Connecticut at the same time as in other states.

I. THE ACT REQUIRES ILECS TO ALLOW LOCAL TELECOMMUNICATIONS RESALE WITHOUT ASSESSING TERMINATION PENALTIES ON THE END USER

CTC's own experience with incumbent local exchange carriers has been that CTC must litigate the same obvious propositions of law at one state commission after another before incumbent local exchange carriers ("ILECs") will comply with the Act. The requirements of Section 251(c)(4)(B) of the Act are a case in point. This provision of federal law prohibits ILECs from imposing "unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service" In the FCC's *Local Competition Order*, the Commission ruled that resale restrictions are presumptively unreasonable. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, FCC 96-325, *First Report and Order*, ¶¶ 939, 948 (rel. Aug. 8, 1996) ("*Local Competition Order*"), *vacated on other grounds, Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir.) (1997), *rev'd in part and remanded in part on other grounds, AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999). Imposition of termination penalties on consumers seeking to avail themselves of resold services serves as a prohibition on resellers in assuming existing service arrangements and acts as just such an unreasonable and illegal restriction on resale.^{2/}

^{2/}Although the *Local Competition Order* does not specifically address the issue of termination or "switching" penalties under term arrangements as the FCC recognized it could not anticipate and enumerate all such restrictions on competition, the FCC clearly expected CLECs to be able to resell customer-specific service arrangements without incurring penalties that would make resale

Resale restrictions act as such a barrier to local market entry, that the Commission has refused to grant a Bell Operating Company (“BOC”) Section 271 authority on that basis. In *Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Service in South Carolina*, 13 FCC Rcd 539 (1997), the FCC held that BellSouth failed to meet the competitive checklist pursuant to Section 271 because it refused to offer customer-specific contract services arrangements (“CSAs”) for resale at wholesale discounts.^{3/} Although the FCC did not resolve the issue of “switching” penalties associated with CSAs because the record before it was not adequately developed on that issue, the FCC recognized that “depending on the nature of these fees, their imposition creates additional costs for a CSA customer that seeks service from a reseller, [and] they may have the effect of insulating portions of the market from competition through resale.” *Id.* at ¶

economically impractical:

[T]he ability of incumbent LECs to impose resale restrictions and conditions is likely to be evidence of market power and may reflect an attempt by incumbent LECs to preserve their market position Given the probability that restrictions and conditions may have anticompetitive results, we conclude that it is consistent with the procompetitive goals of the 1996 Act to presume resale restrictions to be unreasonable and therefore in violation of section 251(c)(4).

Local Competition Order at ¶ 939.

^{3/} Recognizing the error of its ways, BellSouth now claims to provide for resale of services subject to end-user contracts at the wholesale discount with no termination penalty. See *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 97-231, *Brief in Support of Second Application by BellSouth for Provision of In-Region, InterLATA Services in Louisiana*, at 62 (July 9, 1998).

Clearly, the language of the Act and the Commission's prior policy guidance mandate that a BOC is not fit to trade in another market (in the Section 271 case, the in-region, interLATA market) if it assesses termination penalties on the resale of its local telecommunications services.

II. CTC AND OTHER CLECS HAVE BEEN FORCED TO SUE REPEATEDLY TO OBTAIN THEIR RIGHT TO RESELL ILEC SERVICE WITHOUT END USER TERMINATION OR "SWITCHING" PENALTY

Despite the fact that ILECs cannot legitimately impose termination penalties for mere resale of their local services, repetitive, resource-draining litigation has been necessary to vindicate this right, both within and without SBC territory. To illustrate, CTC has raised this issue before multiple state commissions to stop the practice of assessing termination liability on resale customers. The state commissions in New York, Maine, Massachusetts, New Hampshire, and Rhode Island have all held that Bell Atlantic must permit resellers to acquire existing service arrangements with customers without the imposition of termination fees on customers.^{4/} The New Hampshire Commission's decision concluded that the Bell Atlantic's resale restrictions constituted violations of 47 U.S.C. §251 because Bell Atlantic's activity represented an unreasonable restriction on resale.^{5/}

^{4/} See, e.g., *In re Complaint and Request of CTC Communications, Corp.*, Case No. 98-0426, Order (N.Y. P.S.C. Sept. 14, 1998); *In the Matter of CTC Communications Corp.*, Docket No. 98-18, Order (Mass. D.T.E. July 2, 1998); *In the Matter of CTC Communications Corporation, Petition for Enforcement of Resale Agreement*, Case No. 98-061, Order No. 23,040 (N.H. P.U.C. rel. Oct. 7, 1998) ("*N.H. P.U.C. Order*").

^{5/} *N.H. P.U.C. Order* at 16.

The Alabama Commission has also held that no termination penalties should be imposed on CLECs that undertake to resell CSAs to the customer for which they were designed, subject to the existing terms and conditions of those CSAs.^{6/}

Similarly, KMC Telecom Inc. has successfully prosecuted a complaint in SBC's home territory, Texas, in order to prevent SBC from assessing termination penalties on end users for CLECs' resale of SBC services in that state. *Complaint of KMC Telecom Inc. Against Southwestern Bell Telephone Company for Violations of Section 251(c)(4) of the Telecommunications Act of 1996*, Docket No. 17759, Order No. 6 (Tex. P.U.C. Mar. 19, 1998) (requiring SWBT to permit the resale of CSAs at a wholesale discount). SBC will not concede the point in its other states, however, and has forced CLECs such as CTC to relitigate the same issue before state utility commissions hoping to evade the circumspection of the FCC. CTC has filed similar complaint at the Connecticut Department of Public Utility Control against SBC subsidiary SNET.^{7/} KMC is currently litigating the issue at the Kansas Corporation Commission against SWBT, another subsidiary of SBC.^{8/}

^{6/} Further Order on Arbitration, *In the Matter of the Arbitration between AT&T Communications of the Central States, Inc. and BellSouth Telecommunications, Inc.*, Docket No. 25703, at 10 (Ala. P.S.C. April 10, 1998).

^{7/} *Petition and Request for Emergency Relief of CTC Communications Corp. and Partner Communications Group, LLC*, Docket No. 99-03-17 (Conn. D.P.U.C. Mar. 8, 1999). CTC's Petition is attached as Exhibit A.

^{8/} *Petition for Emergency Relief of KMC Telecom II, Inc. from SWBT's Violations of the Federal Telecommunications Act of 1996 and Kansas Statutes*, Docket No. 99-SWBT-713-COM (Kan. Corp. Comm'n April 12, 1999). KMC's Petition is attached as Exhibit B.

While the Kansas and Connecticut cases have yet to be decided, the record is clear. No State Commission has ruled in favor of these “switching” charges in a resale context. SBC’s actions demonstrate that it will not voluntarily comply with the resale provisions of the Act unless coerced on a state by state basis, despite any rhetoric about “open competition.”

It is imperative that the FCC require SBC in all its territories to abolish “switching costs” when a reseller assumes the terms and conditions of existing end user agreements.

III. THE COMMISSION SHOULD EXTEND THE MOST FAVORED NATION CONDITION TO INCLUDE ARRANGEMENTS WHICH A STATE COMMISSION IN THE SBC/AMERITECH REGION HAS DEEMED TO BE AVAILABLE

In their proposed merger conditions, SBC and Ameritech have agreed to make available in *all* their states individual interconnection and unbundling arrangements that their proposed combined companies have made available voluntarily in *any* state.^{9/} This commitment is welcome because it will curb an all too common ILEC practice of refusing to offer the same interconnection and unbundling arrangements available in all of the states the ILEC serves. Yet this commitment does not go far enough, because it does not apply in instances in which the ILEC has been *ordered* to offer certain terms in one or more states, but the issue has not yet been

^{9/} Paragraph 52 of the proposed merger conditions provides:

In-Region Agreements. Subject to the conditions specified in this paragraph, SBC/Ameritech shall make available to any requesting telecommunications carrier in any SBC/Ameritech state any interconnection arrangement or unbundled network element in any other SBC/Ameritech state that was voluntarily negotiated by SBC or any other entity that at all times during the interconnection agreement negotiations was a subsidiary of SBC and that has been made available under an agreement to which SBC/Ameritech is a party and that has been approved after the Merger Closing Date under 47 U.S.C. § 252.

litigated in every state within the ILEC's region. As discussed, despite the fact that the Texas Commission has ruled that under federal law SBC must not assess termination penalties on end users served through use of resold SBC service, SBC refuses to honor this federal mandate in Connecticut and Kansas. As a result, CTC has had to go to the expense of filing a petition at the Connecticut D.P.U.C. to vindicate exactly the same federal right to unrestricted resale of SBC companies' services.

This repetitive, unnecessary litigation is one of the key reasons that local competition has not developed in America. ILECs like SBC will not conform to reasonable conduct, despite the abundance of authority adverse to it. Enough is enough. The Commission should extend Paragraph 52 to include interconnection and unbundling arrangements that have been finally litigated before a state commission, be it through arbitration petition, enforcement action or otherwise. Where, as here, the Texas Commission has determined by final order that federal law requires SBC to desist from assessing termination penalties when its service is resold, that should be the end of the matter for the SBC/Ameritech region as far as that issue is concerned. SBC should not be able to use its incumbency advantage to force competitors like CTC to expend resources to obtain settled federal rights.

IV. THE MERGER CONDITIONS SHOULD APPLY TO CONNECTICUT ON THE SAME SCHEDULE AS ALL OTHER SBC/AMERITECH STATES

As part of the merger conditions, SBC and Ameritech propose to commit to a "Federal Performance Parity Plan" which includes a variety of service quality and performance metrics and damages and payments for non-compliance. Inexplicably, in Paragraph 2 of the merger conditions, SBC and Ameritech also propose to delay application of these conditions to

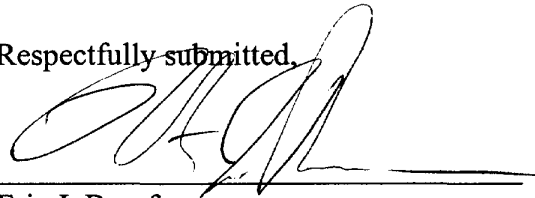
Connecticut. SBC and Ameritech propose to implement the performance measures as late as 12 months after merger closing, and the damages provisions would not attach for up to 15 months after merger closing. By contrast, SBC proposes to commit in all of its other states to implement many of the performance measures as early as August 1, 1999, and to be liable for damages as soon as nine months after merger closing. There is absolutely no basis for the implementation delay for Connecticut. SNET's adherence to performance standards measuring such things as percent firm order confirmations returned on time, percent missed repair appointments, and wholesale billing timeliness would greatly benefit consumers and resellers like CTC. Tracking these performance measures is not dependent upon seamless integration of SBC, Ameritech and SNET operations support, even if such differences constituted a legitimate basis for delayed Connecticut implementation, which they do not. Connecticut consumers need and deserve the same market opening protections as do the consumers in the other states SBC serves. The Commission should direct that SBC give parity to the Parity Plan and implement it in Connecticut at the same time as other states.

V. CONCLUSION

The merger conditions have the potential to further encourage SBC and Ameritech to open local markets to robust competition, something that the Act has been unable to achieve thus far. The Commission should ensure, however, that a combined SBC/Ameritech does not use its combined incumbency advantage as a shield to prevent further competition. The Act applies in every state, not just the ones in which CLECs have had to take the time and expense to litigate to obtain their statutory rights. The Commission could dismantle a formidable barrier to entry if it would direct SBC and Ameritech to abide by final state commission decisions throughout their

proposed combined territory. Further, SBC and Ameritech should honor their merger commitments in Connecticut at the same time as the rest of the country.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eric J. Branfman', written over a horizontal line.

Eric J. Branfman

Morton J. Posner

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Counsel for CTC Communications Corp.

Dated: July 19, 1999

EXHIBIT A

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HOWARD L. SLATER
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March 8, 1999

VIA HAND DELIVERY

Dr. Louise E. Rickard
Acting Executive Secretary
Department of Public Utility Control
10 Franklin Square
New Britain, Connecticut 06051

Re: Petition and Request for Emergency Relief
of CTC Communications Corp. and Partner
Communications Group, LLC -- Docket No. 99-03-

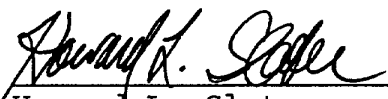
Dear Dr. Rickard:

Delivered herewith on behalf of CTC Communications Corp. ("CTC") and Partner Communications Group, LLC ("PCG"), is a Petition and Request for Emergency Relief. Due to the sensitivity of the issues raised in the Petition, CTC and PCG respectfully request that this matter be accorded immediate attention.

Thank you for your consideration.

Respectfully submitted,

CTC COMMUNICATIONS CORP.
PARTNER COMMUNICATIONS GROUP, LLC

By 
Howard L. Slater

Enclosure

cc: Southern New England Telephone Company

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

RE: PETITION AND REQUEST FOR	:	DOCKET NO. 99-03-__
EMERGENCY RELIEF OF CTC	:	
COMMUNICATIONS CORP. AND	:	
PARTNER COMMUNICATIONS	:	
GROUP, LLC	:	MARCH 8, 1999

PETITION AND REQUEST FOR EMERGENCY RELIEF

I. **STATEMENT OF PETITION**

1. CTC Communications Corp. ("CTC") and Partner Communications Group, LLC ("PCG") (collectively, "Petitioners") herein request that the Department of Public Utility Control ("Department") find that the Southern New England Telephone Company ("SNET") is in violation of 47 U.S.C. §§ 251(c)(4) and 252 in addition to §§ 16-247a and 16-247b of the Connecticut General Statutes for creating unreasonable barriers to market entry and interfering and unreasonably attempting to restrict Petitioners' businesses in Connecticut.

2. Petitioners request immediate emergency relief in the form of an Order that SNET immediately cease and desist its unlawful and anticompetitive practices. Petitioners also request that the Department enjoin SNET from imposing termination fees; from forcing customers to leave behind lines with SNET when migrating Centrex service; for double billing customers for common block charges; for imposing unreasonable escalation fees for routine service orders; and from continuing to bill customers after they have discontinued SNET service. Petitioners further request that the Department order SNET to produce customer contracts, backup billing information and service records when requested to verify customer contractual obligations; to provide detailed itemized monthly bills for wholesale services; to meet migration intervals and due dates as promised so that Petitioners may properly serve its customers on parity with SNET's

customers; to charge migration fees based on the incremental administrative cost to SNET; and to allow Petitioners to assume customer contracts without impediment. Lastly, Petitioners request that the Department order SNET to refund all overcharges and unlawfully collected charges.

3. In the alternative, Petitioners request that the Department conduct compulsory arbitration of these issues as mandated by 47 U.S.C. § 252(e)(5), resolving the issues raised in this Petition within 90 days.

4. The exact legal name of the Petitioners and their principal place of businesses are:

CTC Communications Corp.
360 Second Avenue
Waltham, MA 02451

Partner Communications Group, LLC
Twin Lake Commons, Suite 29
999 Foxon Road
North Branford, CT 06471

5. The names, titles, addresses and telephone numbers of the attorneys or other persons to whom correspondence or communications in regard to this Petition are to be addressed are:

Jordan B. Michael, Esq.
Director, Regulatory Affairs
CTC Communications Corp.
360 Second Avenue
Waltham, MA 02154
Phone: (781) 466-8080

William J. Kaliszewski
President
Partner Communications Group, LLC
Twin Lake Commons, Suite 29
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Howard L. Slater, Esq.
Jennifer D. Janelle, Esq.
Murtha, Cullina, Richter and Pinney LLP
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Hartford, Connecticut 06103-3469
Phone: (860) 240-6000
Fax: (860) 240-6150
Attorneys for: CTC Communications Corp.

6. Petitioner CTC Communications Corp., a publicly held Massachusetts corporation, is a competitive local exchange carrier ("CLEC") reselling SNET's services in Connecticut pursuant to a Certificate of Public Convenience and Necessity ("CPCN") granted by the Department in its Decision, Docket No. 97-12-09, Application of CTC Communications Corporation for a Certificate of Public Convenience and Necessity, April 8, 1998. CTC's CPCN authorizes it to operate as a reseller of residential business, local exchange and intrastate telecommunications services in Connecticut.

7. Petitioner Partner Communications Group, LLC, a Connecticut limited liability company, is a CLEC reselling SNET's services in Connecticut pursuant to a CPCN granted by the Department in its Decision, Docket No. 96-10-04, Application of Partner Communications Group, LLC for a Certificate of Public Convenience and Necessity, November 20, 1996. PCG's initial CPCN authorizes it to provide 800, Dial One, and calling card services as a switchless reseller in Connecticut. PCG applied for and was granted an expansion of its CPCN to resell local exchange service in Connecticut. Decision, Docket No. 97-07-17, Application of Partner Communications Group, LLC for a Certificate of Public Convenience and Necessity, September 3, 1997.

III. SPECIFIC COMPLAINTS AGAINST SNET

8. CTC and PCG currently market to and enroll Connecticut customers for resold services from SNET.

9. SNET has refused to allow customers to assign their service agreements to Petitioners or other resellers at retail rates without the payment of burdensome termination fees in violation of 47 U.S.C. §§ 251 and 252, C.G.S. §§ 16-247a and 16-247b and SNET's own resale tariff.¹ SNET's policy forces customers to pay exorbitant termination fees based on the full balance of the contract term if such customers choose to do business with a reseller, or otherwise avoid termination fees altogether by remaining with SNET as the service provider.

10. Since July, 1998, SNET has refused to provide Petitioners with copies of customer contracts and/or service records as requested, notwithstanding the fact that the customers in issue have executed valid letters of authorization for Petitioners to obtain the information, in violation of 47 U.S.C. §§ 251 and 252 and C.G.S. §§ 16-247a and 16-247b. Many current SNET customers claim that they have never signed the contracts which SNET claims they have. On many occasions, SNET has billed a customer for termination fees when the account is migrated to a reseller even after SNET is unable to produce a contract. On the occasions when SNET does produce contracts or customer service records, the start or end dates for any product are often not indicated thereon. Furthermore, at least one contract received by CTC from SNET has been visibly altered.

¹ Although CTC believes that it is entitled to wholesale discounts on the resold services under assumed contracts pursuant to 47 U.S.C. § 251(c)(4)(A), it is willing to assume those contracts at retail rates, subject to the Department's review thereof.

11. SNET requires customers subscribing to its "Centralink" Centrex services who wish to migrate to Petitioners' service offerings to "leave behind" a certain number of lines in a SNET account or be forced to pay termination liability for all lines. SNET requires that whatever lines are left behind be disassociated from the migrated group and are therefore often not useful to a migrated customer. SNET then continues to bill the customer for those lines left behind.

12. SNET requires payment of a "common block" charge for all Centrex lines. After a customer is migrated from SNET to a reseller, customers are double billed for common block charges, once for the migrated lines and once for the lines which SNET forced the customer to leave behind.

13. Petitioners have migrated a substantial number of customers to their Centrex offerings. Many SNET customers have expressed interest in Petitioners' Centrex offerings, but ultimately have not been migrated solely due to the attendant costs of leaving lines behind and common block charges.

14. Ultimately, out of all the requests for migration made by Petitioners, many customers, comprising most of Petitioners' lines, have had their service definitively and detrimentally affected as a direct result of SNET's anticompetitive and discriminatory practices as described herein below.

15. Since April, 1998, Petitioners have experienced several instances where SNET has provided a time interval for completion of migration and then not completed the migration within the time interval. Many due dates have been unilaterally changed by SNET without notification to Petitioners. Consequently, Petitioners have begun billing customers prior to migration who are then double billed for services.

16. Since April, 1998, many customers choosing a competitive service provider have had their service terminated by SNET and had no service for 24 hours or more. These terminations have occurred despite the fact that all migrations should be transparent, requiring only a change of the customer record to the reseller.

17. Since December, 1998, SNET has been charging customers unreasonable "escalation fees" for expedited service requests, purportedly to accommodate SNET system limitations regarding order entries. These escalation fees are imposed on any migration request outside of the SNET imposed time line. These escalation fees can be three to four times the normal charge for similar migrations, although the "normal" charges are often not defined or provided.

18. SNET purportedly does not have a wholesale intrastate toll offering available for resale in Connecticut, which results in the billing of toll by SNET Retail and ultimately the receipt of two monthly bills by migrated customers. On information and belief, SNET filed a tariff with the Department for a wholesale tariff offering in April, 1998 to which it is not adhering due to a purported inability of its system to separate wholesale from retail tolls.

19. Customers subscribing to SNET Retail intrastate calling plans who migrate to a CLEC have been discontinued from their calling plans and placed on full minute rounding at the most expensive retail rate, notwithstanding SNET's continuation of billing for toll usage.

20. Many customers continue to be billed by SNET for full service after such time as service is being provided by a CLEC, purportedly due to "system error." Additionally, SNET has refused to make available accurate backup billing information when requested by Petitioners.

21. Most customers who subscribe to SNET voice mail and/or Internet services who choose a competitive service provider are subject to disconnection of voice mail and/or Internet services by SNET.

22. SNET's refusal to provide resellers with a detailed itemized monthly bill for wholesale services further impedes the effectiveness of local service resale as a financially viable competitive vehicle in Connecticut.

23. SNET's policies and practices as outlined above result in customer confusion, increased expense and act as a barrier to market entry and an impediment to competition. As such, SNET's policies are in direct violation of 47 U.S.C. §§ 251 and 252 and C.G.S. §§ 16-247a and 16-247b.

24. SNET's conduct imperils Petitioners' businesses and reputations in Connecticut and is anticompetitive and discriminatory.

25. Neither Petitioner has been able to reach an agreement with SNET or otherwise resolve these issues despite repeated attempts.

IV. STATEMENT OF THE LAW

26. 47 U.S.C. § 251(c)(4)(B) prohibits SNET from imposing "unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service...." The FCC has ruled that resale restrictions are presumptively unreasonable and has further interpreted section 251(c)(4) as including contract services and customer-specific services. See First Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-89, FCC 96-325, rel Aug. 8, 1996 ("Local Competition Order"), pars. 939, 948.

27. Conn. Gen. Stat. § 16-247a establishes as a goal of the State the development of effective competition as a means of providing customers with the widest possible choice of services. The Department has found that "[l]ocal service competition will be facilitated by the removal of any and all restrictions on resale of telephone company local service offerings by authorized service providers in Connecticut." Decision, Docket No. 95-11-08, Application of Southern New England Telephone Company for Approval to Offer Interconnection Services and Other Related Items Associated With the Company's Local Exchange Access Tariff, July 17, 1996 at 5.

28. Conn. Gen. Stat. § 16-247b(b) provides that "[e]ach telephone company shall provide reasonable nondiscriminatory access to all equipment, facilities and services necessary to provide telecommunications services to customers." (Emphasis added).

V. EXPLANATION OF UNUSUAL CIRCUMSTANCES

29. As previously stated, SNET's conduct imperils Petitioners' businesses and reputations in Connecticut and is anticompetitive and discriminatory. By refusing to allow assumption of customer contracts without exorbitant and unjustifiable fees, conditions and limitations and hampering the migration of customers to Petitioners' services, SNET is threatening Petitioners' continued ability to do business in Connecticut as resellers, as well as threatening Connecticut resale competition as a whole.

30. SNET's conduct jeopardizes the continuance of Petitioners' business operations in Connecticut as well as continued competition as a whole. Petitioners request expedited treatment of this docket and immediate issuance of the injunctive order requested below.

VI. RELIEF REQUESTED

31. For the reasons set forth hereinabove, Petitioners respectfully request immediate emergency relief in the form of an Order that SNET immediately cease and desist its unlawful and anticompetitive practices. Petitioners also request that the Department enjoin SNET from imposing termination fees; from forcing customers to leave behind lines with SNET when migrating Centrex service; from double billing customers for common block charges; from imposing unreasonable escalation fees for routine service orders; and from continuing to bill customers after they have discontinued SNET service. Petitioners further request that the Department order SNET to produce customer contracts, backup billing information and service records when requested to verify customer contractual obligations; to provide detailed itemized monthly bills for all wholesale services; to meet migration intervals and due dates as promised so that Petitioners may properly serve their customers on parity with SNET's customers; to charge migration fees based on the incremental administrative cost to SNET; and to allow Petitioners to assume customer contracts without impediment. Lastly, Petitioners request that the Department order SNET to refund all overcharges and unlawfully collected charges.

32. In the alternative, Petitioners request that the Department conduct compulsory arbitration of these issues as mandated by 47 U.S.C. § 252(e)(5), resolving the issues raised in this Petition within 90 days.

33. Petitioners request that, once the Department has resolved the issues stated herein, the Department order commencement of a "fresh look" period for all services during which all consumers may select a reseller without penalty, in order to sustain the competitive environment. Petitioners have demonstrated that SNET has impeded competition and will show that during this time SNET has made diligent and sustained efforts to lock customers into lengthy contracts

for services which are substantially similar to noncompetitive basic local services for the purpose of insulating business customers from competition. At such time as the Department removes competitive impediments, the Department should make provision for Connecticut consumers to avail themselves of the benefits thereof.

Respectfully submitted,

CTC COMMUNICATIONS CORP.

By Howard L. Slater
Howard L. Slater
Jennifer D. Janelle

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Its Attorneys

PARTNER COMMUNICATIONS GROUP, LLC

By Howard L. Slater
Howard L. Slater, Duly Authorized
on behalf of
William J. Kaliszewski, President
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EXHIBIT B

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

DATESTAMP AND RETURN

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April 12, 1999

STATE CORPORATION COMMISSION

VIA OVERNIGHT MAIL

APR 13 1999

David Heinemann
Executive Director
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027

David J. Heinemann

Docket
Room

Re: Petition for Emergency Relief of KMC Telecom II, Inc. From
Southwestern Bell Telephone Company's Violations of the Federal
Telecommunications Act of 1996 and Kansas Statutes

Dear Mr. Heinemann:

On behalf of KMC Telecom II, Inc. ("KMC II"), enclosed is an original and seven (7) copies of the above-captioned Petition. Please date-stamp the enclosed extra copy of this filing and return it to the undersigned in the enclosed self-addressed, stamped envelope. Should you have any comments or questions regarding this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

M Posner/raj

Eric J. Branfman
Morton J. Posner

Counsel for KMC Telecom II, Inc.

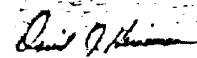
cc: Michael Duke
Eva Powers (KCC)
Mike Cavell (SWBT)
Allen Brady Cantrell (CURB)
Paul W. Garnett, Esq.

BEFORE THE
STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

APR 13 1999

Petition for Emergency Relief)
of KMC Telecom II, Inc.)
From Southwestern Bell Telephone)
Company's Violations of the)
Federal Telecommunications Act of 1996)
and Kansas Statutes)

 Docket
Room

Docket No. 99-SWBT-713-COM

PETITION FOR EMERGENCY RELIEF
OF KMC TELECOM II, INC.

Pursuant to Section 82-1-218, K.A.R. 82-1-218, of the Rules of Practice and Procedure of the State Corporation Commission of the State of Kansas, KMC Telecom II, Inc. ("KMC II" or "Petitioner"), by its counsel, hereby submits this Petition for Emergency Relief requesting that the State Corporation Commission ("Commission") order Southwestern Bell Telephone Company ("SWBT") to cease and desist from imposing penalties on consumers converting custom contracts to resellers such KMC II, and to provide such other relief as the Commission deems necessary. If the Commission does not take such action, Kansas customers that are parties to long-term agreements with SWBT will be indefinitely denied the benefits of competitive choice provided by resellers of telecommunications services, such as KMC II. Such a result is contrary to the pro-competitive goals of the both the Federal Telecommunications Act of 1996¹ and the Kansas Telecommunications Act of 1996.²

¹ See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C.A. §§ 151 et seq. (1998 supp.).

² 1997 Kansas Law Ch. 268 (H.B. 2728), amending K.S.A. 66-127, 66-1,187 and K.S.A.1995 Supp. 66-125, 75-4709 and repealing the existing sections; also repealing K.S.A. 66-124 (May 17, 1996).

INTRODUCTION

1. KMC Telecom II, Inc. is a Delaware corporation certificated by this Commission to provide telecommunications services in the State of Kansas as an interexchange service provider ("IXC") and a competitive local exchange company ("CLEC"). KMC II's corporate offices are located at 1545 Route 206, Suite 300, Bedminster, NJ 07921-2567.

2. Southwestern Bell Telephone Company is an incumbent local exchange company ("ILEC"), as defined in Section 251(h) of the Federal Telecommunications Act of 1996. SWBT is authorized by this Commission to provide local telecommunications in Kansas. SWBT's corporate offices in Kansas are located at 220 East Sixth Street, Room 515, Topeka, Kansas 66603-3596.

JURISDICTION

3. The Commission has jurisdiction and authority to grant the relief requested pursuant to Section 82-1-220, K.A.R. 82-1-220, of the Rules of Practice and Procedure of the State Corporation Commission of the State of Kansas. Moreover, the Commission has jurisdiction over this matter pursuant to the Federal Telecommunications Act of 1996, the Kansas Telecommunications Act of 1996 and the Commission's retention of jurisdiction over the SWBT/KMC II Interconnection Agreement.

FACTUAL BACKGROUND

4. In marketing its services on a resale basis to customers in Kansas, KMC II has found that a substantial number of business telecommunications users are unable to convert their contracts to KMC II and other resellers, because SWBT imposes onerous and unjustified penalties on such conversions. Although termination penalties only apply to the termination of customer contracts, SWBT currently imposes termination penalties on the conversion of customer contracts to resellers.

5. In spite of SWBT's claims to the contrary, a customer's decision to convert its existing contract to a reseller is not tantamount to a termination, and, therefore, termination penalties should not apply.³ Under the resale model, when a customer converts its contract to KMC or any other reseller, SWBT continues to receive the retail price of the customer contract less the wholesale discount. The wholesale discount is based on SWBT's costs avoided in no longer providing the services to the retail customer. Therefore, under the resale model KMC simply assumes SWBT's existing contract and SWBT continues to be fully compensated.⁴ Given that SWBT continues to be made whole it can hardly be said that its contract is terminated when a customer merely converts the contract to a reseller.

6. Although the amount of SWBT's conversion penalties depend upon the product type and the time remaining on the contract, conversion penalties are most often quite onerous. KMC II has found that a substantial portion of its targeted business customers have at least one contract with SWBT that could be subject to conversion fees. For example, one SWBT customer was recently assessed a \$188,028.26 penalty for attempting to avail itself of the KMC II's service offerings on a resale basis. *Please see redacted version of customer bill attached herein as Exhibit A.* Contract customers are simply unwilling and unable to pay such conversion penalties. KMC II is, likewise, incapable of paying such outrageous punitive conversion penalties on behalf of its prospective customers.

³ Even if it can be argued that a conversion is the same as a termination, SWBT's termination penalties are unlawful restrictions on resale and should, therefore, be voided.

⁴ On the other hand, under a facilities-based model, if a customer cancels its contract with SWBT all revenues are diverted to the competitor.

7. The imposition of such conversion penalties on customers with long term contracts wishing to avail themselves of resellers such as KMC II serves to protect SWBT's market share by impeding the efforts of new entrants, such as KMC II, to establish a foothold in the local exchange marketplace. Faced with the prospect of paying such fines, CLEC resellers, such as KMC II, are unable to effectively compete for these customers' business. As a result, Kansas consumers are not able to fully realize the benefits of competitive alternatives.

CLAIMS FOR RELIEF

Southwestern Bell Telephone Company's Actions Violate Sections 251(c)(4)(B) and 252 of the Telecommunications Act of 1996

8. SWBT's policy of imposing punitive conversion penalties on customers seeking to avail themselves of the services of resellers such as KMC II and other competitive telecommunications service providers violates the letter and the spirit of the Federal Telecommunications Act of 1996. Section 251(c)(4)(B) of the Federal Telecommunications Act of 1996 prohibits SWBT from imposing "unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service" 47 U.S.C. 251(c)(4)(B). In the FCC's *Local Competition Order*, the Commission ruled that resale restrictions are presumptively unreasonable and interpreted Section 251(c)(4) as including contract services and customer-specific services. See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, FCC 96-325, *First Report and Order*, released Aug. 8, 1996 ("*Local Competition Order*"), ¶¶ 939, 948, *vacated on other grounds by Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir.) (1997), *rev'd in part and remanded in part on other grounds AT&T Corp. v. Iowa Utils. Bd.*, Case No. 97-826, 119 S. Ct. 721 (Jan. 25, 1999). Although the *Local Competition Order*

does not specifically address the issue of termination or conversion penalties under contracts, the FCC clearly expected CLECs to be able to resell contract services without incurring penalties that would make such resale economically impractical.

[T]he ability of incumbent LECs to impose resale restrictions and conditions is likely to be evidence of market power and may reflect an attempt by incumbent LECs to preserve their market position Given the probability that restrictions and conditions may have anticompetitive results, we conclude that it is consistent with the procompetitive goals of the 1996 Act to presume resale restrictions to be unreasonable and therefore in violation of section 251(c)(4).

Local Competition Order, ¶ 939.

9. Imposition of conversion fees on consumers seeking to avail themselves of resold services serves as a prohibition on resellers assuming existing customer contracts and acts as just such an unreasonable and illegal restriction on resale. The FCC itself has recognized this possibility. In the *Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Service in South Carolina*, 13 FCC Rcd. 539 (1997), inter alia, the FCC held that BellSouth failed to meet the competitive checklist pursuant to Section 271 because it refused to offer customer-specific contract services arrangements ("CSAs") for resale at wholesale discounts.⁵ Although the FCC did not resolve the issue of conversion penalties associated with CSAs because the record before it was not adequately developed on that issue, the FCC recognized that "depending on the nature of these fees, their imposition creates additional costs for a CSA customer that seeks service from a reseller, [and] they may have the effect

⁵ BellSouth now provides for resale of services subject to end-user contracts at the wholesale discount with no conversion penalty. See *Brief in Support of Second Application by BellSouth for Provision of In-Region, InterLATA Services in Louisiana*, filed with the FCC on July 9, 1998, p. 62. (emphasis added).

of insulating portions of the market from competition through resale." *Id.* at ¶ 222; *See also, e.g., Complaint of KMC Telecom Inc. Against Southwestern Bell Telephone Company for Violations of Section 251(c)(4) of the Telecommunications Act of 1996*, TX PUC Docket No. 17759, Order No. 6 (TX P.U.C. March 19, 1998) (requiring SWBT to permit the resale of CSAs at a wholesale discount); *Freedom Ring, L.L.C. Petition Requesting that Incumbent LECs Provide Customers With a Fresh Look Opportunity*, N.H.P.U.C., DR 96-420, Order No. 22,798 (Dec. 8, 1997) (ordering Bell Atlantic to provide a fresh look opportunity to customers with long term contracts containing termination penalties.).

***Southwestern Bell Telephone Company's Policy
Violates the Kansas Telecommunications Act of 1996***

10. Much like Section 251 of the Federal Telecommunications Act, Section 4 of the Kansas Telecommunications Act of 1996 states "a local exchange carrier *shall be required* to offer to allow reasonable resale of its retail telecommunications services." *See* K.S.A. § 66-2003 (emphasis added). Section 4 specifies instances where restrictions on the resale of retail service offerings would be permissible. For example, Section 4 states that the Commission shall approve restrictions on resellers purchasing services offered to one class of customers and reselling such services to another class of customers. *Id.* Section 4 continues that the Commission "shall approve any other reasonable limitations on resale to the extent permitted by the federal act." *Id.* As discussed below, the Commission has consistently held that restrictions on the resale of retail services, such as punitive conversion penalties on customer contracts, are not permitted under the Kansas Telecommunications Act.

11. In interpreting Section 4, the Commission has "directed SWBT to offer for resale any . . . services is provides at retail," thus preventing SWBT from imposing restrictions on the resale

of customer contracts. Similarly, in the course of arbitrating numerous interconnection agreements between SWBT and CLECs, the Commission has determined that SWBT must provide for the resale of all services offered at retail, including contract services, to end users at wholesale rates. *See, e.g., In the Matter of Petition by AT&T Communications of the Southwest, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 97-AT&T-290-ARB, at 9, 15 (Kan. St. Corp. Comm. Feb. 6, 1997). Therefore, SWBT's imposition of punitive conversion penalties on customer contracts simply cannot be countenanced with the Commission's precedent on the issue of resale restrictions.

12. The Kansas statutes also state that every public utility is required to establish just and reasonable rates. *See* K.S.A. § 66-1,189. The statute continues that every unjust . . . rate, joint rate, toll, charge or exaction is prohibited, unlawful and void." *Id.* Surely, SWBT cannot argue that conversion penalties such as those discussed above are just and reasonable. To the contrary, such conversion penalties are unjust and unreasonable and are therefore unlawful and void under the Kansas statutes.

13. Finally, the Kansas Telecommunications Act of 1996 generally directs the Commission to "ensure that consumers throughout the state realize the benefits of competition" ⁶ Due to SWBT's exorbitant conversion penalties, contract customers in Kansas wishing to utilize the services of resellers cannot currently "realize the benefits of competition." In fact, SWBT has affirmatively acted anti-competitively by choosing to punish champions of competition through the imposition of outlandish punitive termination penalties on such customers. Therefore, the Commission should exercise the broad powers granted to it by statute to afford customers the ability

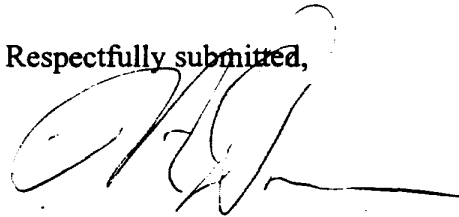
⁶ *See* K.S.A. § 66-2002.

to choose alternative resale providers without having to pay unjust and unreasonable punitive conversion penalties to SWBT.

REQUESTED RELIEF

WHEREFORE, KMC II respectfully requests that, in order for the Commission to accomplish its goal of promoting effective customer choice and a truly competitive local exchange marketplace, it should enter an Order enjoining SWBT from imposing fees on consumers converting to KMC II's resale offerings, and providing such other and further relief as the Commission deems necessary.

Respectfully submitted,



Eric J. Branfman
Morton J. Posner
Swidler Berlin Shereff Friedman, LLP
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Washington, D.C. 20007
Tel.: (202) 424-7500
Fax: (202) 424-7645

Counsel for KMC TELECOM II, INC.

April 12, 1999

EXHIBIT A

Sample Customer Bill With Punitive Conversion Penalty

(redacted version)

Number

January 15, 1999



Southwestern Bell

Page 1 of 8

Account Summary

► **Previous Charges and Credits**

Amount of Last Bill	18577.34
Payments Applied:	02-04-99 9391.96Cr
	02-15-99 9185.38Cr

Thank You .00

► **Current Charges**

SWBell Telephone \$	(See Page 3)	177389.95
Total Federal Tax		243.91Cr
Total State and Local Taxes		10882.22

Current Charges Due by Mar 02 188028.26

► **Total Amount Due** 188028.26

Helpful Numbers

SWBell Telephone	For Billing Questions	1-800-559-7928
	For Payment Arrangements or Late Payments	1-800-924-1743
	To Place an Order or Change Service	1-800-499-7928
	For Repair Services	1-800-286-8313

Please detach and mail this portion with your payment



Southwestern Bell

Account Number

Mail Payment To:

P.O. BOX 650661
DALLAS, TX 75265-0661

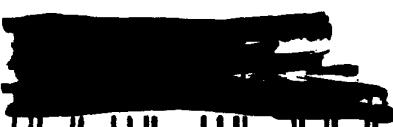


Amount Due	188028.26
Due Date	Mar 02

** Final **

Bill Date
Feb 15, 1999

Date Mailed
Feb 22, 1999



**C001

Make Checks
Payable To
Southwestern Bell

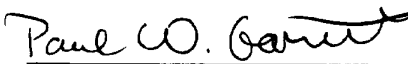
9711 7852910195 0719 00007999 4011000000000 018802826 09

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered via the United States mail, first-class postage prepaid, this 12th day of April, 1999 to the following:

Mr. Mike Cavell, General Attorney
Southwestern Bell Telephone Company
220 SE 6th Street, Room 515
Topeka, Kansas 66603-3596

Mr. Allen Brady Cantrell
Citizen's Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, Kansas 66604



Paul W. Garnett

VERIFICATION

STATE OF GEORGIA)

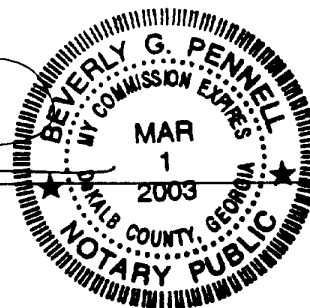
COUNTY OF DEKALB)

I, Mike Duke, being first duly sworn, declare that I am the Regulatory Business Manager of KMC Telecom II, Inc., the Petitioner in this subject proceeding, and that I am authorized to make this Verification on behalf of Petitioner; that I have read the foregoing Petition for Emergency Relief and know the contents thereof; and that the same are true and correct to the best of my knowledge, information, and belief.

Mike Duke
Name: Mike Duke
Title: Regulatory Business Manager
KMC Telecom II, Inc.

Subscribed and sworn to me, this 9 day of APRIL, 1999.

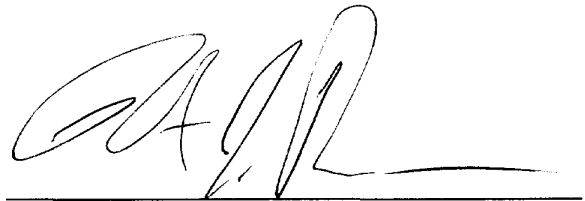
[Signature]
Notary Public



My Commission expires: 3-1-2003

CERTIFICATE OF SERVICE

I, Morton J. Posner, hereby certify that on this 19th day of July 1999, copies of the foregoing Comments of CTC Communications Corp. in CC Docket No. 98-141 were sent via first class U.S. mail to the parties on the attached list.

A handwritten signature in dark ink, appearing to be 'MJP', is written over a horizontal line.

Morton J. Posner

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